person dving intestate vests in his heirs, but title to land, except in small estates, cannot pass unless by the Administrator.

I do not propose to do more than mention sections 17 and 18 of Enactment No. 1 (Administration of Estates). I wish these sections were more rigidly regarded and in the case of section 18 that offenders be prosecuted.

Mr. Lim Cheng Ean for the defendant cited a number of cases in support of his plea of limitation, but I do not think it was sufficiently appreciated that the parties in this suit are governed by the Muhammedan Law of inheritance. Had the necessary steps been taken on the death of Said bin Mat Amin the distributive proportions would have been declared by the Kathi in accordance with the provisions of the Muhammedan Law of inheritance.

Wilson (6th Edn. p. 261) discloses the sharp difference between the Hindu joint family and the Moslem. After stating that in practice the estate of a deceased Muhammedan often remains for a long time undivided, the descendants continuing to live together like a Hindu joint family, it goes on to cite the conflicting judgments that once existed and the conclusion ultimately reached removing the limitation period from Moslems (Rustomji 5th Edn. p. 1101/2).

Thus I hold that in this particular case and under the peculiar circumstances whereby the defendant was present and apparently assented to the appointment of the plaintiff as administrator she cannot some months later oppose him when he seeks to perform the duties required of him by virtue of his appointment to administer and distribute the estate.

I should make it clear that in this decision I have not declared that the defendant or anyone in possession should vacate the land in question. I simply say that the defendant cannot successfuly plead section 26 of Enactment No. 60 (Limitation) to prevent the surrender of the title deeds. These deeds should remain in the custody of this Court until the determination of this suit or until further order made. As to the claim for account I make at present no order. I doubt if the defendant is capable of rendering any account, and even if so the period back for which liability may exist is doubtful.

The suit should proceed; the preliminary objection is not upheld.

Preliminary Objection Overruled.

TAN CHENG CHUAN v. INDIAN OVERSEAS BANK LTD.

[Orig. Civ. Juris. (Callow, J.) July 18, 1949]

[Penang — Civil Suit No. 34 of 1949]

Damages for dishonour of cheque — Banker and Customer — Quantum of damages.

This was an action for damages consequent upon the dishonouring by the defendant bank of the plaintiff's cheque. The cheque was wrongly dishonoured and the defendant bank admitted their error.

Held, that the plaintiff was entitled to reasonable compensation for injury to his credit and in the circumstances of the case was entitled to damages of $1,000/-.

Case referred to :—

(1) *Rolin and another v. Steward* (1854) 23 L.J. 148.

CIVIL SUIT.

Ong Huck Lim for the Plaintiff.

F. G. Pooley for the Defendants.

Cur. Ad. Vult.

Callow, J. : — This is a claim for damages consequent upon the dishonouring by the defendant bank of the plaintiff's cheque.

The facts are not in dispute. The plaintiff is the contractor for the Canteen of the Chung Ling High School, Penang. It is a large school of some 1,500 pupils and 60 teachers.

On the 11th of January, 1949 the plaintiff drew a cheque for $439.65 payable to Messrs. Chiat Moh. This cheque was dishonoured.

On the 14th of January, 1949 the plaintiff accompanied by the drawer's son (2nd Witness) visited the bank. The defendant bank admitted the error and the plaintiff drew his balance which exceeded the amount of the dishonoured cheque, closing the account.

It is shown that in consequence of this episode the drawer of the dishonoured cheque, Messrs. Chiat Moh, closed the plaintiff's credit account and now insist on cash; further that the Refrigerator Service Company cancelled an offer to sell the plaintiff an Ice-maker Machine on the hire purchase system and demanded cash, and the 4th witness Yeow Bong Peng who formerly granted the plaintiff a credit account of some $300.00 per mensem insisted on cash after the dishonour of the cheque.

The defendant bank acknowledged their error and endeavoured to make amends, but the parties were unable to agree upon the quantum of damages.

Clearly the plaintiff is entitled to reasonable compensation for injury to his credit (Chitty, 19th

edition, page 271), and no proof of actual damages is demanded *Rolin and another v. Steward*[1]. In *Rolin v. Steward* (cited *supra*) William, J. said :—

> .....since the dishonouring of cheques is particularly calculated to be injurious to a person in trade, if it be alleged and proved that the plaintiff is a trader, the jury may take that fact into their consideration in estimating their damages,.....

and in directing the jury Lord Campbell said that the jury "should give such temperate damages as they may judge to be a reasonable compensation for the injury the plaintiff must have sustained from the dishonour of his cheque."

In Sheldon's Practice and Law of Banking 5th edition, page 52 it states :—

> The banker, before taking such a serious step as dishonouring a cheque for lack of funds, must make absolutely certain that the state of the account justifies him in so doing. Substantial damages would usually be awarded against a banker who had improperly dishonoured a cheque and thereby injured the credit of a business man.

Now it was not shown that the plaintiff has suffered in his business as claimed in paragraph 6 of his pleadings, but he has shown injury to credit and reputation. I was not impressed by the books Exhibit A.14 a to d which certainly appear to support Mr. Pooley's contention that they had been prepared for the case. They have detracted from the plaintiff's credibility.

After due deliberation of all the circumstances, and after consideration and comparison with other reported cases I find a fair sum the plaintiff is entitled to for damages is $1,000.00.

He is also entitled to costs.

Judgment for the plaintiff against the defendants for $1,000.00 and costs on scale of Sessions Court.

Judgment for the Plaintiff.

PUBLIC PROSECUTOR v. LEE AH SAM (f).

[App. Crim. Juris. (Willan, C.J., Pretheroe and Spenser-Wilkinson, JJ.) August 25, 1949]

[F.M. — Criminal Reference No. 1 of 1949]

Sentence — Sentence under Emergency Regulations, Regulation 5(1) — Interpretation and General Clauses Enactment, S. 51 — Penal Servitude and Rigorous Imprisonment — Whether whipping is mandatory — Courts Ordinance, 1948, S. 35.

In this case the accused was found guilty of the offence of consorting with another person who had in his possession arms and explosives, an offence under Regulation 5(1) of the Emergency Regulations, 1948. This regulation provides that the person guilty of the offence "shall be liable to be punished with death or with penal servitude for life and whipping". The learned trial Judge was of opinion that this was not a case in which he should impose the death penalty and reserved as a question for the Court of Appeal whether the Regulation permits of any lesser sentence than penal servitude for life being imposed and also whether a sentence of whipping is mandatory.

Held, (1) that the sentence of penal servitude for life is a maximum sentence and any lesser sentence of penal servitude may be imposed; (2) that such lesser sentence must be penal servitude and cannot be rigorous imprisonment; and (3) that the sentence of whipping is discretionary and not mandatory.

REFERENCE TO COURT OF APPEAL.

N. L. Cohen for the Public Prosecutor.

E. D. Shearn for the Accused.

Cur. Adv. Vult.

Willan, C. J. : — This is a Reference to the Court of Appeal under section 35 of the Courts Ordinance, 1948, which reads :—

> 35. (1) When any person has in a trial before the High Court in the exercise of its original criminal jurisdiction been convicted of an offence, the Judge may, if he thinks fit, reserve for the decision of the Court of Appeal any question of law which has arisen in the course of the trial of such person and the determination of which would affect the event of the trial.
>
> (2) The person so convicted shall thereupon be remanded to prison or, if the Judge thinks fit, be admitted to bail.
>
> (3) The Court of Appeal shall review such case, or such part of it as may be necessary, and finally determine the question and thereupon may alter the sentence passed and pass such sentence or give or make such judgment or order as the Court of Appeal thinks fit.

The facts are that a Chinese woman, Lee Ah Sam, was convicted of consorting with persons who had possession of fire-arms and explosives in circumstances which raised a reasonable presumption that she intended to act in a manner prejudicial to the maintenance of public order — an offence contrary to Regulation 5(1) of the Emergency Regulations, 1948, which reads :—

> Any person who consorts with or is found in the company of another person who is carrying or has in his possession arms or explosives in contravention of the provisions of Regulation 4 of these Regulations, in circumstances which raise a reasonable presumption that he intends to or is about to act with, or has recently acted with, such other person in a manner prejudicial to public safety or the maintenance of public order, shall be guilty of an offence against these Regulations and shall be liable to be punished with death, or with penal servitude for life and whipping.

The learned trial Judge was of the opinion that this was not a case in which he should impose the death penalty and reserved, as a question for the Court of Appeal under section 35 of the Courts Ordinance, 1948, whether Emergency Regulation 5(1) permits of any lesser sentence than penal servitude for life being imposed, and also whether a sentence of whipping is mandatory.